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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA  
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EBERTO BAUTISTA-EREDEA,

Case No. 3:20-cv-00403-LRH-CLB

Petitioner,

ORDER

v.

GARRETT, et al.,

Respondents.

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13 28 U.S.C. § 2254 habeas corpus petitioner Eberto Bautista-Eredea has  
14 submitted a second motion for appointment of counsel (ECF No. 20) as well as a motion  
15 for leave to file an amended petition (ECF No. 21). Respondents have responded to  
16 both, and Bautista-Eredea replied (ECF Nos. 23, 24). As discussed below, the court  
17 grants both motions.

18 There is no constitutional right to appointed counsel for a federal habeas corpus  
19 proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999  
20 F.2d 425, 428 (9th Cir.1993). The decision to appoint counsel is generally  
21 discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert. denied, 481  
22 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469  
23 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case  
24 are such that denial of counsel would amount to a denial of due process, and where the  
25 petitioner is a person of such limited education as to be incapable of fairly presenting his  
26 claims. See *Chaney*, 801 F.2d at 1196; see also *Hawkins v. Bennett*, 423 F.2d 948 (8th  
27 Cir.1970).

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1           Bautista-Eredea's first motion for counsel was a form motion that merely  
2 asserted that the issues were too complex for his comprehension (see ECF No. 5).  
3 However, because his petition was clear and the remaining legal issues did not appear  
4 to be particularly complex, the court concluded that counsel was not warranted (see  
5 ECF No. 3).

6           Bautista-Eredea now explains that he speaks Spanish and had an interpreter at  
7 his trial (ECF No. 20). He states, through the help of second inmate, that while he  
8 intended to raise all issues that he raised in his direct appeal and state postconviction  
9 petition, the inmate who assisted him in his original federal petition only raised three  
10 grounds for relief. *Id.* Bautista-Eredea attached a proposed amended petition to his  
11 motion for leave to file an amended petition, which appears to include the claims he  
12 asserted in his state proceedings (ECF Nos. 21, 21-1).

13           Responding to both motions, respondents state that they reviewed Bautista-  
14 Eredea's state proceedings and confirm that he had an interpreter for his criminal  
15 proceedings (ECF No. 23). While they note that they cannot otherwise make any  
16 assertions about Bautista-Eredea's language fluency, they defer to the court with  
17 respect to appointment of counsel. They further state that they have no specific  
18 objection to Bautista-Eredea filing an amended petition. The court, therefore, grants the  
19 motion for appointment of counsel and the motion for leave to file an amended petition.

20           **IT IS THEREFORE ORDERED** that petitioner's motion for appointment of  
21 counsel (ECF No. 20) is **GRANTED**.

22           **IT IS FURTHER ORDERED** that the Federal Public Defender for the District of  
23 Nevada (FPD) is appointed to represent petitioner.

24           **IT IS FURTHER ORDERED** that petitioner's motion for leave to file an amended  
25 petition (ECF No. 21) is **GRANTED**. The Clerk is directed to detach and FILE the  
26 amended petition (ECF No. 21-1).

27           **IT IS FURTHER ORDERED** that the Clerk **ELECTRONICALLY SERVE** the FPD  
28 a copy of this order, together with a copy of the original petition for writ of habeas


1 corpus (ECF No. 4) and the amended petition (ECF No. 21-1). The FPD has **30 days**  
2 from the date of entry of this order to file a notice of appearance or to indicate to the  
3 court its inability to represent petitioner in these proceedings.

4 **IT IS FURTHER ORDERED** that after counsel has appeared for petitioner in this  
5 case, the court will issue a scheduling order, which will, among other things, set a  
6 deadline for the filing of any further amended petition.

7 **IT IS FURTHER ORDERED** that respondents' motion to dismiss (ECF No. 8) is  
8 **DISMISSED** without prejudice.

9 **IT IS FURTHER ORDERED** that respondents' motion for extension of time to  
10 respond to the motion for appointment of counsel (ECF No. 22) is **GRANTED** *nunc pro*  
11 *tunc*.

12 DATED this 28th day of April, 2021.

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14 LARRY R. HICKS  
15 UNITED STATES DISTRICT JUDGE  
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